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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,860	07/16/2003	Andrew R. Weisenberger	062373	1759

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EXAMINER

FRANK, RODNEY T

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/621,860	Applicant(s) WEISENBERGER ET AL.	
	Examiner Rodney T. Frank	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-11 and 13-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-11 and 13-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

37 C.F.R. 1.105 – Request for Information

1. During the course of the interview with the applicants on Tuesday July 25th, 2006, there were issues that arose that have required the examiner to request further information in relation to this application. In the course of examining or treating a matter in a pending or abandoned application filed under 35 U.S.C. 111 or 371 (including a reissue application), the examiner or other Office employee may require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat the matter, for example:

(v) *Information used in invention process:* A copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used in the invention process, such as by designing around or providing a solution to accomplish an invention result. For example, the examiner found that there are certain building codes and regulations (the 1973 Standard Building Code, for example) that regulate structures such as homes. If this code and it's various requirements are known to the applicant, then this information should be disclosed.

(vii) *In Use:* Identification of any use of the claimed invention known to any of the inventors at the time the application was filed notwithstanding the date of the use. The inventor mentioned that they anticipate to perform anywhere from 3000-4000 of these certifications this year. The applicant also provided a certification that was performed on June 30, 2006 with a signature of an inspector that is not one of the applicants. The

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examiner needs to know how long this method has been in use and if it is for sale to other contractors or builders other than the applicant.

(viii) *Technical information known to applicant:* Technical information known to applicant concerning the related art, the disclosure, the claimed subject matter, other factual information pertinent to patentability, or concerning the accuracy of the examiner's stated interpretation of such items. The applicant notes a desired range of moisture content. Is there an industry standard on what is considered too wet? If so, was this information used to make a determination of a compliance to said standard in order to issue the certificate? Further, the applicant indicated there is some software that manipulated the measured results in order to make it useful and issue the certificate. Is the software developed by the applicant or is it an over the counter product? This information is needed in order to properly evaluate the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 11, and 19 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure, which is not enabling. How the determining of moisture content being below a desired level is accomplished is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). There are various references,

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Rynhart et al. for example, that make a plurality of measurements store data into a database in order to determine moisture content. There are also various standards that are used in the home inspection field that determine whether or not there is too much moisture or not, as mold and bacteria growth are a primary concern in homes.

Therefore, one of ordinary skill in the art can look at the obtained data of a measurement database and "determine" if a structure of interest is compliant or not, and issue a degree of compliance or failure, as home inspectors issue certificates or reports that detail their findings. However, if the applicant is utilizing some form of software to make this determination on its own, then simply making measurements and interpreting them is not sufficient, as some programming must be done to include specific tolerances and parameters so that standards can be adhered to and proper computer manipulation of data can be conducted. Simply stating "a decision is made at decision block ##" does not disclose how the decision is made (see for example, line 1 on page 5 of the specification).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 13 recites the limitation "said criterion" in reference to claim 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

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7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 5-11, and 13-34 are rejected under 35 U.S.C. 102(b) as being anticipated by the data and brochure sheets for the Quest Technologies Indoor Air Quality Monitors models aq-5000 and aq-5001. A brief summary of the devices can be found at the following web site addresses:

<http://www.quest-technologies.com/IAQ/aq5000.htm>

and

<http://www.quest-technologies.com/IAQ/aq5001.htm>

A summary of the aq5000 device states:

The AQ5000Pro handheld IAQ monitor is designed for building walk through surveys. It's portable design allows you to quickly respond to your customers indoor air quality complaints.

To provide an accurate indoor air quality picture, the aq5000Pro IAQ monitor records carbon dioxide, relative humidity, temperature, and dew point. Available options include support for additional gases and air velocity. A linear analog input channel interfaces with external devices including VOC monitors, respirable dust monitors, light meters, formaldehyde monitors and more.

After you complete your survey and have captured your IAQ monitor data, you can print a hardcopy for review or you can download the data into QuestSuite Professional. QuestSuite Professional software is simple to use and allows you to analyze, chart, report and archive your data.

With this in mind, I will now refer to the claims.

In regard to claims 1, 11, and 19 this document describes a method and system for certifying at least a portion of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within said portion of the interior of the structure; and providing a certificate of moisture content level

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measurements. Page 6 of the PDF brochure gives a detailed example the software used to generate an inspection report and time summary data, which though not a certificate, would serve the same purpose and would actually give more detailed information than the claimed certificate. The PDF brochure even specifically states on page 6 that you can display chart data with a graph style you choose and data you select, and that you can annotate a chart with free-form comments, thus giving the capability to annotate a failing or compliance with respect to the data measurements.

Upon reading the specification in order to gain a better insight as to what the "certificate" being issued meant, it was determined by the examiner that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters. In the Quest Technologies reference, a moisture test is performed. Since the applicant does not claim any test in particular, the examiner feels that this meets the first part of the claim for measuring moisture. Then, since the certificate is a document that gives information regarding the results for the moisture test, the report described on page 6 of the PDF brochure document though not exactly a certificate, would be deemed as an obvious equivalent to one of ordinary skill in the art.

In reference to claims 5-9, 14-18, and 20-24, though the specific structure under test is not specifically disclosed, the reference discloses on page 4 of the PDF Brochure that it can be used during the course of a building walkthrough, which all the various structures disclosed in the claims, would fall under the description of a "building".

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In reference to claims 10, 13, 25, and 29-31, though the specific percentage value that is considered to be desired is not specifically disclosed, official notice is taken that a satisfactory moisture content is based upon industry standards that would be known to one of ordinary skill in the art. For example, an article from the Department of Wood and Paper Science; Housing and Clothing at the University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore, these percentage parameters are viewed as a parameter well known within the preview of one of ordinary skill in the art.

In reference to claims 32-34, the locations of the measurements are locations that are inside of a building. Since these are areas of interest during a building walk-through survey, then these locations are considered when the device is discussed as being used during a building walk through to make measurements.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1, 5-11, and 13-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rynhart et al. (U.S. Patent Number 6,340,892; hereinafter referred to as Rynhart). Rynhart discloses that a moisture meter (1) has an LCD display (8) driven by a digital microcontroller (50) which generates digital moisture reading data. Readings are stored as discrete records in files. The microcontroller (51) stores a library of material data and automatically compensates signals from a capacitive/impedance sensor circuit (51) according to both stored material parameter values and sensed temperature. Users may edit the parameter values. A non-removable cover (4) is used at the final stage of production to configure the meter for the nature of interfacing (such as serial port interfacing) required (Please see the abstract).

10. In regard to claims 1, 11, and 19 Rynhart discloses a method and system for certifying at least a portion of structural components of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within structural components of said portion of the interior of the structure; and providing a certificate of moisture content level measurements. Figure 10, for example outlines the various types of wood, wall materials, and roofing materials that can be measured.

Upon reading the specification in order to gain a better insight as to what the "certificate" being issued meant, it was determined by the examiner that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters (page 2 line 33 through page 4 line 3, for example). In the Rynhart reference, moisture

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content is determined (see column 1 lines 25 and 26) for structural components of the interior of a structure (see column 2 line 65 through column 3 line 2). Then, since the certificate is a document that gives information regarding the results for the moisture test, Rynhart discloses beginning in column 6 with line 66 and continuing through column 7 line 2 whereby the use of Microsoft Office software can be used to generate a report, certificate, or any other document to report data. The reporting of data using Microsoft Office software, though not exactly a certificate would be deemed as an obvious equivalent to one of ordinary skill in the art. The examiner would also like to mention that though the certificate may be a simpler reporting means than a detailed report as the one described in the Rynhart reference, utilizing the certificate in lieu of the report does not provide any benefit nor produce any unexpected result over the prior art.

In reference to claims 5-9, 14-18, and 20-24, though the specific structure under test is not specifically disclosed, the reference discloses in column 1, lines 1 through 18 that the device is used for surveying and it has an advantage of being used in environments such as attic spaces. Since an attic is usually associated with a house and surveying is also used, amongst other things, during home inspection, the terminology used would refer to a structure that would meet the description of a "building".

In reference to claims 10, 13, 25, and 29-31, though the specific percentage value that is considered to be desired is not specifically disclosed, this parameter is a design choice that would be obvious to one of ordinary skill in the art. For example, an

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article from the Department of Wood and Paper Science; Housing and Clothing at the University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore, these percentage parameters are viewed as a design choice well within the preview of one of ordinary skill in the art.

In reference to claims 32-34, Rynhart discloses that his device is specifically used for wood, dry wall, and plaster. Wood is usually associated with a window or doorframe, and for walls or ceiling since the capability for measuring drywall is disclosed, this is deemed as disclosed as well.

Conclusion

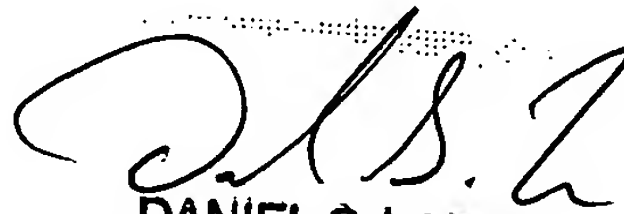
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (571) 272-2193. The examiner can normally be reached on M-F 9-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RTF
August 2, 2006


DANIEL S. LARKIN
PRIMARY EXAMINER